

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Noah Deutsch	Team: Team # 8	CCRB Case #: 200304663	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/30/2003 12:30 PM	Location of Incident: Columbia Street and West 9th Street	Precinct: 76	18 Mo. SOL 10/30/2004	EO SOL 10/30/2004	
Date/Time CV Reported Wed, 06/18/2003 6:13 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 06/18/2003 6:13 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Severino Concordia	00397	910614	ND BKS
2. DT3 Mark Frunzi	00722	913949	B/S-END
3. SGT Michael Burrello	01250	898993	B/S-WND

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Karan Young	05166	913469	B/S-WND
2. DT3 Laurence Stafford	06354	892680	B/S-WND

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Severino Concordia	Abuse: Det. Severino Concordia frisked and searched § 87(2)(b)	
B.DT3 Severino Concordia	Off. Language: Det. Severino Concordia made remarks to § 87(2)(b) based upon her gender.	
C.DT3 Mark Frunzi	Off. Language: Det. Mark Frunzi made remarks to § 87(2)(b) based upon her gender.	
D.DT3 Mark Frunzi	Force: Det. Mark Frunzi used physical force against § 87(2)(b)	
E.SGT Michael Burrello	Abuse: Sgt. Michael Burrello authorized the strip-search of § 87(2)(b)	

On April 30, 2003, § 87(2)(b), was arrested in a narcotics sweep conducted by police officers of Brooklyn South Narcotics. § 87(2)(b) filed a civilian complaint almost six weeks later in which she alleged that one of the officers who arrested her, later identified as Det. Severino Concordia, searched her at the scene. § 87(2)(b) further stated that the search included inappropriate contact of a sexual nature. § 87(2)(b) also alleged that Det. Concordia and Det. Mark Frunzi made comments to her based on her gender, that Det. Frunzi pushed her against a fence, and that she was strip searched at the 76th Precinct.

Page 2
CCRB Case # 200304663

§ 87(2)(b) was placed in a cell with § 87(2)(b). PO3 escorted § 87(2)(b) to a bathroom adjacent to the cell area and had her submit to a strip search. § 87(2)(b) went into the room, and, per PO3's instructions, lifted her shirt, then pulled her pants down to her knees and squatted down. PO3 alone observed § 87(2)(b) from the doorway of the bathroom (allegation E).

§ 87(2)(b) stated that the officer scratched the inside of her vagina when he pulled his hand out of her pants, but she did not seek medical attention. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Results of Investigation

Civilian Witness Statements

§ 87(2)(b)
§ 87(2)(b), an African American male § 87(2)(b), was interviewed on August 11, 2003, by phone (encl. 6a).

§ 87(2)(b) confirmed that he was arrested with § 87(2)(b) and § 87(2)(b) on April 30, 2003. He stated that officers in plain clothes apprehended them, putting them up against a fence and searching inside their pockets. § 87(2)(b) mentioned that the officers "found what they found" when they searched him. § 87(2)(b) stated that, while standing with his back to the fence less than ten feet from where § 87(2)(b) stood, he observed a male white officer search § 87(2)(b) going inside her pockets, and feel around inside the crotch area of her jeans after § 87(2)(b) had been handcuffed. § 87(2)(b) did not specifically recollect seeing the officer unbutton or unzip her jeans before he placed what § 87(2)(b) believed to be his left hand down the front of her pants. He felt around for a few seconds before § 87(2)(b) recoiled, or "pushed away a little bit, stating that she was a woman and that he was not supposed to do that." The same officer proceeded to feel inside her pants briefly a second time, for perhaps 3-4 seconds. § 87(2)(b) appeared to be "offended," and again said, "I'm a woman." The officer said, "I had to check to make sure, but we have a female officer on the way." Although § 87(2)(b) did not recall the officer saying anything in particular, he did state that he thought the officer's actions were "abusive." § 87(2)(b) did not see any officer push § 87(2)(b) against a fence following the search of her person, nor did he observe the officer grab § 87(2)(b) breasts or touch inappropriately in any other way. § 87(2)(b) described the officer as being unusually short with glasses, and a slight accent.

§ 87(2)(b)
§ 87(2)(b) was interviewed on January 28, 2004, by phone (encl. 7a) § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b) confirmed that he was arrested before § 87(2)(b) on April 30, 2003. He also stated that he is a friend of § 87(2)(b) and that § 87(2)(b) had asked him to call the CCRB months ago. He said that § 87(2)(b) told him that an officer touched her, and that she filed a complaint. § 87(2)(b) did not witness any officer touch her inappropriately. § 87(2)(b) stated that he was inside the prisoner van when it rolled up on the scene. At that time, § 87(2)(b), § 87(2)(b), and § 87(2)(b) were standing against the fence lining the sidewalk. § 87(2)(b) did not see § 87(2)(b) get searched. At some point, § 87(2)(b) was placed inside the P-van with § 87(2)(b). § 87(2)(b) said that there was a question as to whether § 87(2)(b) was a man or a woman, and that he tried to tell an officer that she is clearly female, however he was very vague as to where this conversation took place, whether it was at the scene of the arrests or later on at the Precinct and he could not describe the officer at all other than to say that he was white or Hispanic. § 87(2)(b) stated that, according to what § 87(2)(b) told him later, an officer touched her inappropriately "thinking she's a man," however, § 87(2)(b) did not know when in the course of her arrest this incident allegedly took place. § 87(2)(b) admitted that § 87(2)(b) told him about her allegations only after they had been released from jail. § 87(2)(b) reported that § 87(2)(b) told him that she "got a case cause they was thinking I was a man," and proceeded to tell him that the police officer had touched her and asked him to call the CCRB. § 87(2)(b) did not hear any officer make any comment to § 87(2)(b) based on her gender.

§ 87(2)(b)

§ 87(2)(b) was interviewed on March 23, 2004, by phone (encl. 8a).

§ 87(2)(b) stated that she, § 87(2)(b) and § 87(2)(b) had been apprehended and handcuffed, and that the arresting officers “then started to search.” The arresting officers told them that they had called for a female officer, but “they were still searching us before the female officer even came on the scene.” § 87(2)(b) witnessed an officer whom she described as a “short-built guy” search § 87(2)(b). At the time, § 87(2)(b) was against the fence, standing shoulder to shoulder with § 87(2)(b). § 87(2)(b) stated that § 87(2)(b) told the officer that she was wearing two pairs of pants; she was wearing jeans and a pair of stretch pants underneath the jeans. The officer who searched § 87(2)(b) opened her jeans saying, “We need to see if you have pockets in these other pants,” and he placed his hand inside the jeans. As the officer searched her in this manner, § 87(2)(b) made a statement to the effect of, “You are touching my private parts” whereupon the police officer immediately withdrew his hand. A short time later, the prisoner van arrived. The female officer from the prisoner van asked the arresting officers if the suspects had been searched and they said yes. § 87(2)(b) said that the arresting officers had “took everything off of us that they needed to take” by the time the P-van arrived. § 87(2)(b) and § 87(2)(b) were loaded in and taken to the 76th Precinct. § 87(2)(b) stated that she did discuss the case with § 87(2)(b) after the fact, as § 87(2)(b) is a friend of hers. § 87(2)(b) told her that the officer squeezed her breasts, but she did not witness anything like that. § 87(2)(b) stated that § 87(2)(b) told the officer searching her that she was a female, but that he went ahead and searched her anyway.

Police Officer Interviews

Det. Mark Frunzi

Det. Frunzi, a white male, 6’4” and 265 pounds, was interviewed on August 28, 2003, at the CCRB (encl. 9a-c).

On May 6, 2003, Det. Frunzi was conducting a buy and bust operation with Sgt. Michael Burrello and Det. Severino Concordia. Det. Stafford and Det. Young were also part of that team. Det. Frunzi noted in his D.A.R. that at 1510 he had a positive result for observations of three subjects making a drug buy at the rear of § 87(2)(b).

Det. Frunzi and his two partners observed these three individuals, later identified as § 87(2)(b), § 87(2)(b), and § 87(2)(b) enter a building known to Det. Frunzi as a location where marijuana and cocaine is sold. When they came back outside a few minutes later, they appeared to be holding glass jars containing marijuana. Det. Frunzi radioed to Sgt. Burrello and Det. Concordia, who pulled up next to the three individuals and exited their vehicle. Det. Frunzi said, “92 Charlie,” indicating to Sgt. Burrello that all three individuals should be arrested. When he said this, § 87(2)(b) turned and looked at him, while at the same time attempting to place the glass jar containing the marijuana she had just purchased inside her pocket. Det. Concordia reached § 87(2)(b) first and grabbed her arms and handcuffed her. Det. Frunzi reached them and took the jar of marijuana out of § 87(2)(b) hand. She clung to the jar momentarily, but ultimately allowed the detective to take it from her when he told her to “just let it go.” The other two suspects were handcuffed as well. Det. Frunzi did not search any of the three suspects after they were handcuffed. He stated that he did not remember if either Sgt. Burrello or Det. Concordia searched any of the three suspects after they were handcuffed. He later stated that Det. Concordia absolutely did not conduct such a frisk or search because the prisoner van was at the scene immediately after the arrests were made, and he and Det. Concordia escorted § 87(2)(b) to the P-van, there turning her over to Det. Young. Det. Frunzi noted that whenever possible, female prisoners are searched by female officers. There was no question as to § 87(2)(b) gender, and neither Det. Frunzi, nor any of the officers present made remarks to § 87(2)(b) based on her gender.

Det. Frunzi did not remember § 87(2)(b) making any allegations of misconduct at the scene of her arrest. Det. Frunzi denied that there was any incident during the arrest of § 87(2)(b) that either was, or could have been misconstrued as, a sexually ambiguous situation relating to the search of her person for drugs or weapons. To his knowledge, Det. Concordia had no contact with § 87(2)(b) at the scene beyond placing her in handcuffs. Asked if § 87(2)(b) ever accused an officer of having touched her inappropriately at the scene, Det. Frunzi stated, “Absolutely not.” Det. Concordia did not put his hands inside § 87(2)(b) pants. Det. Frunzi never shoved § 87(2)(b) into the fence.

Det. Severino Concordia

Det. Concordia, a white male 5'3" and 140 pounds, was interviewed on September 23, 2003, at the CCRB (encl. 10a-c).

Det. Concordia and Sgt. Burrello waited inside their unmarked Nissan Maxima while Det. Frunzi walked around on foot in the vicinity of Columbia Street, looking to make observations of drug sales. They received a radio transmission from Det. Frunzi describing a group of three individuals, two females and one male, who had just made a drug buy, giving their description and the direction that they were walking. Sgt. Burrello and Det. Concordia drove to the location given and pulled up near to the group. They exited the vehicle and Det. Concordia approached the individual closest to him, who was later identified as § 87(2)(b). § 87(2)(b) had something in her hand and she was in the process of placing it inside her pocket. Det. Concordia grabbed her hand before she could place the object in her pocket. Det. Frunzi arrived simultaneously and removed the object from § 87(2)(b) hand. It turned out to be a clear glass jar containing marijuana. Det. Frunzi handcuffed § 87(2)(b). The other two individuals, later identified as § 87(2)(b) and § 87(2)(b) were also arrested § 87(2)(b).

Det. Concordia stated that § 87(2)(b) complained to him about the fact that he put his hands on her when he stopped her. Asked what exactly she said, Det. Concordia hesitated, then said, "She said, 'Why did you touch my pussy?'" Det. Concordia did not search § 87(2)(b) inside her pants. He did not search or frisk § 87(2)(b) at all. He did not touch her breasts at any time. Det. Concordia stated that, after § 87(2)(b) stated that he had touched her vagina, he tried to "laugh it off" because he did not do any such thing, but he was embarrassed because § 87(2)(b) had made the statement loud enough for other people at the scene to hear her. Det. Concordia thought that it was a strange thing for her to say. Subsequent to the arrest, Det. Concordia did speak with other officers at the scene, he could not remember specifically who, the gist of their conversation being, "Can you believe what she said?" Det. Concordia acknowledged that he had definitely heard § 87(2)(b) comment because it was directed at him. He said that he was pretty sure that the other officers at the scene were aware of some sort of interaction between him and § 87(2)(b), but could not say for sure if the other officers heard the comment in question.

Det. Concordia stated that no physical force was used against § 87(2)(b) beyond what he described. Neither he nor Det. Frunzi nor Sgt. Burrello ever pushed § 87(2)(b) into the fence. Det. Concordia again denied that he ever placed his hand inside § 87(2)(b) pants and did not insert his finger into her vagina. He stated that he never for thought that § 87(2)(b) was anything but a female and reported no comments made by him or any of his fellow officers concerning her gender. To his knowledge, § 87(2)(b) was searched by Det. Young at the scene.

Sgt. Michael Burrello

Sgt. Burrello, a white male, 6'2" and 210 pounds, was interviewed on October 29, 2003, at the CCRB (encl. 11a-c).

Sgt. Burrello was the supervisor of the narcotics operation in question on April 30, 2003. § 87(2)(g)
§ 87(2)(b) Det. Concordia apprehended § 87(2)(b). Sgt. Burrello never thought that § 87(2)(b) was a man (he noted that Det. Frunzi's description of the three individuals came over the radio as one male and two females.)

Sgt. Burrello stated that Det. Concordia dealt with § 87(2)(b) at the scene, but he remembered nothing particularly remarkable about their interaction. Sgt. Burrello did not recall what was said during this interaction, other than Det. Concordia telling § 87(2)(b) that she was under arrest. Sgt. Burrello did not hear § 87(2)(b) claim that she had been touched in an inappropriate way. He did not hear § 87(2)(b) say, "Why did you touch my pussy?" He did not witness either Det. Concordia or Det. Frunzi shove § 87(2)(b) into the fence adjacent to the sidewalk where the three suspects were apprehended. Sgt. Burrello had a brief conversation with § 87(2)(b) during which § 87(2)(b) stated that he needed his cane because of an injury that he suffered when he was in the Marine Corps. It was possible that he was having this conversation at the time that § 87(2)(b) made the allegation. Sgt. Burrello stated that to his knowledge, Det. Concordia did not search § 87(2)(b) person at the scene because he remembered § 87(2)(b) being searched later on by Det. Young after the P-van arrived. At that time, Det. Young did

conduct a field search of § 87(2)(b) person for undiscovered weapons or contraband before placing § 87(2)(b) inside the P-van and taking her to the 76th Precinct.

Sgt. Burrello confirmed that he ordered § 87(2)(b) to be strip searched at the 76th Precinct, and that Det. Young performed the strip search. Sgt. Burrello explained that his decision to have § 87(2)(b) strip-searched was based on his determination that she could have secreted other contraband not discovered during the field search on her person. Sgt. Burrello stated that in his experience, contraband can be secreted on an individual's body in a number of different ways. Sgt. Burrello witnessed no officer make any comments to § 87(2)(b) based upon her gender. To his knowledge, there was no question as to her gender.

Det. Karan Young

Det. Young, an African American female, was interviewed on January 16, 2004, at the CCRB (encl. 12a-c).

Det. Young was assigned to the prisoner van with Det. Stafford on April 30, 2003. She noted on her D.A.R. that they had three under by Det. Frunzi at 12:30 PM. They proceeded to the 76th Precinct for arrest processing, and lodged the female prisoners at the 78th Precinct at 6:15 that evening.

Det. Young was not present for the arrests, noted above, of § 87(2)(b), § 87(2)(b), and § 87(2)(b). As one of the officers assigned to the prisoner van, she was called to the scene after the suspects had already been apprehended. Det. Young noted that it was her responsibility to search each female prisoner at the scene of their arrest before loading them into the prisoner van. Det. Young had no specific recollection of § 87(2)(b) and stated only that, as a female arrested at the scene, § 87(2)(b) would have been searched by her.

The general elements of § 87(2)(b) allegations were told to Det. Young in the hopes that she would remember more about the incident. She stated that she did not witness anyone at the scene make any allegations of that nature. Det. Young remembered nothing remarkable about her tour on 4/30/04. Det. Young stated a typical field search involves a search of the prisoner's person and pockets for weapons or undiscovered contraband. Det. Young did not observe Det. Concordia search any female at the scene of the arrests. She did not see Det. Concordia or Det. Frunzi use any physical force against any of the prisoners on that date, and did not see either officer shove any prisoner into a fence. Det. Young heard no comments made by any of the officers at the scene based on the gender of any of the female prisoners.

Det. Young seemed to have no specific recollections of her tour on 4/30/03. She stated that she would have conducted the strip-search of any female prisoner arrested by her team on the date in question. Det. Young did not recall the activities of Det. Stafford at the scene.

Attempts to Contact Additional Civilian Witnesses

Attempts were made to interview a man who may have been inside the prisoner van with § 87(2)(b) at the time of the incident, identified as § 87(2)(b). Two letters were sent to § 87(2)(b), which failed to elicit a response. A call was placed to § 87(2)(b) at which time his mother stated that he had received the letters from the CCRB, had no knowledge of the incident, and did not wish to participate in an investigation. § 87(2)(g)

Police Department Documents

The CCRB obtained a copy of the **tactical plan** for the Brooklyn South Narcotics Unit's operation on 4/30/03 (encl. 13a). The tactical plan enabled the CCRB to identify the officers involved in the arrest of § 87(2)(b). Also enclosed documents related to § 87(2)(b) arrest, including **property vouchers** showing that one glass jar of marijuana was seized from § 87(2)(b) possession, and a **field test report**, prepared by Det. Frunzi, stating that the substance seized was in fact marijuana (encl. 14-15). A copy of the **command log** from the 76th Precinct shows that § 87(2)(b) was logged in at 3:30 PM. Her sex is clearly marked female. Other notation on the command log states explicitly that Sgt. Burrello authorized the strip-search of § 87(2)(b) for drugs, and that the search was conducted by Det. Young (encl. 16a). The CCRB used the BADS database to identify other individuals arrested in the Narcotics sweep on 4/30/03, and **arrest reports** for all those arrested in the sweep are also enclosed (encl. 17-20). § 87(2)(g)

Complainant Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Subject Officer Substantiation History

Det. Concordia, in his thirteenth year as a member of the NYPD, has no prior substantiated allegations of misconduct in his CCRB history. This case represents the first in which he has been named as a subject officer. Sgt. Burrello, also in his thirteenth year, has no prior substantiations on his history. Det. Frunzi has one prior substantiated allegation, a force allegation from 1994, for which the final outcome is not available.

Conclusions and Recommendations

Undisputed Facts

It is not disputed that Det. Concordia apprehended § 87(2)(b) at the scene, and did have a verbal interaction with her. It is not disputed that § 87(2)(b) made a statement to the effect of, “Why did you touch my pussy,” or, “You got the pussy,” in the moments immediately following her apprehension.

Officer Identification

§ 87(2)(b) described the primary subject officer as an unusually short white male, fitting the description of Det. Concordia, who is 5’3”. § 87(2)(b) stated that the officer who searched § 87(2)(b) was a “short-built guy.” Det. Frunzi was identified on the arrest paperwork as the arresting officer and identified the other members of his team. All of the officers interviewed in connection with the case confirmed their participation in the incident.

Credibility

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation A: Det. Concordia frisked and searched § 87(2)(b)

Allegation B: Det. Concordia made remarks to § 87(2)(b) based upon her gender.

Allegation C: Det. Frunzi used physical force against § 87(2)(b)

Allegation D: Sgt. Burrello authorized the strip search of § 87(2)(b)

Allegation A

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Police Department Patrol Guide, procedure 208-05. The Patrol Guide states explicitly that such a field search is to be conducted immediately after an arrest, the purpose being the recovery of any undiscovered weapons, evidence, or contraband. Although a field search is non-invasive, an officer conducting a field search has the right to “reach into or under clothing to remove” any object that is deemed unusual. § 87(2)(g)

The Patrol Guide draws no distinction between the genders of prisoners and officers conducting a field search at the scene of an arrest, indicating that male officers may freely conduct field searches of female suspects. In more invasive searches, such as strip searches, female prisoners must be searched by female officers.

§ 87(2)(b), § 87(2)(g)

Allegations B and C

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation D

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation E

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: